

**Remarks:** The foregoing Amendment is made in response to the Examiner's request in paragraph 3 of the Office Action that legal terminology be removed from the Abstract, pursuant to MPEP 608.01(b). This change does not involve any new matter. It is believed that the Amendment places the Abstract in condition for final approval.

***Response to Claim Objections (Paragraph 4 of Office Action)***

Amend Claim 1 as follows:

Page 8, line 4, change "track" to -track;-.

Amend Claim 2 as follows:

Page 8, line 11, change "track;" to -track.-.

Amend Claim 13 as follows:

Page 10, line 2, change "secure himself" to -be secured-.

**Remarks:** It is submitted that these changes correct informalities raised by the Examiner in paragraph 4 of the Office Action and do not involve any new matter.

***Response to Claim Rejections – 35 U.S.C. § 112 (Paragraphs 5-6 of Office Action)***

In paragraphs 5 through 6 of the Office Action, Examiner reject claim 3 as being indefinite. In response, Applicant respectfully requests that the following amendment be made to the Application:

Amend Claim 3 as follows

Page 8, line 13, delete "about its axis".

Amend Claim 14 as follows

14. (Amended) Apparatus of claim 13 wherein said means for a person to be secured comprise:

(a) a tether line suspended from said support structure in generally parallel fashion to said track; and

(b) a safety cable slidably engaged at one end to said tether line.

**Remarks:** It is submitted that these amendments avoid the Examiner's rejection in paragraphs 5 through 6 of the Office Action and do not involve any new matter.

***Response to Claim Rejections – 35 USC § 102 (Paragraphs 7-8 of Office Action)***

In paragraph 8 of the Office Action, the Examiner rejects claims 1-3 and 15-16 under 35 U.S.C. 102 as being anticipated by JP '573. The Examiner asserts that JP '573 discloses "a hoist having a retractable line, generally 19, that can be connected to a covering 21." Applicant traverses Examiner's contention and respectfully submits that JP '573 does not disclose a retractable line as does the present application. Element 19 of JP '573, cited by Examiner, is a fixed ring attachable to hook part 17 of crane 15 (see Fig. 4 of JP '573). Although JP '573 teaches that the crane itself can be raised (and, presumably, lowered), JP '573 does not teach or claim the means by which this is accomplished. The drawings of JP '573 appear to disclose a dual chain pulley system for controlling the height of the crane. Such a system is different from and more restrictive than the retractable line 5 of the present invention that, once released, can be maneuvered in multiple directions. By contrast, in JP '573, the crane requires precise positioning over and then lowering to the point of attachment to the canvas that is to be spread over the payload. JP '573 therefore requires precise alignment of the crane and the point of attachment to the canvas.

The retractable line 5 of the present application permits far greater maneuverability for attachment to the spreader bar that will be connected to the payload cover. As explained on page 6, lines 6 through 7, in the specification of present application, the hoist 4 need only be positioned at a point behind the rear of the payload 7 and rod 17. Once the retractable line 5 is released, the spreader bar 8 attached at the end of the retractable line can be manipulated in all directions, including longitudinally and laterally at ground level, to permit attachment to the leading edge of tarpaulin 10. In short, the retractable line 5 of the present invention gives the operator much greater flexibility and makes attachment to the tarpaulin 10 distinctively easier than in JP '573.

For a reference to anticipate a claimed invention, "the identical invention must be shown in as complete detail as is contained in the . . . claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236 (Fed. Cir. 1989) (quoted in MPEP § 2131). It is respectfully submitted that the retractable line 5 of the present invention is neither claimed nor disclosed in JP '573. Consequently, Claims 1 and 15 are not anticipated by JP '573.

With respect to Claims 2 and 3, it is believed that the remarks above put independent Claim 1 in a condition for allowance. Because Claims 2 and 3 depend from Claim 1, they too should be allowable.

With respect to Claim 16, it is believed that the remarks above put independent Claim 15 in condition for allowance. Because Claim 16 depends from Claim 15, it too should be allowable.

***Response to Claim Rejections – 35 USC § 103 (Paragraphs 9-10 of Office Action)***

In paragraphs 9 through 10 of the Office Action, the Examiner rejects Claims 9-10 under 35 U.S.C. § 103(a) as unpatentable over JP '573 in view of Stewart '028. As demonstrated below, the Applicant respectfully submits that these claims are not obvious.

As noted by the Examiner, JP '573 does not disclose any means for moving the hoist. Although Stewart '028 discloses a means for moving the crane, 96, the means is limited to "a push-button station 96 suspended from a swivel boom 97 that is hingedly supported from the front face of a guide support 53." Claim 8 of Stewart '028 (see lines 25 through 30 on page 6) mandates that the means for remote operations be suspended in some fashion to the crane apparatus. In contrast, as is apparent from claim 9 in the present application, the means for operating the present invention need not be suspended or connected in any way to the apparatus; remote control and other modes of operation are both contemplated and claimed. This is reinforced by the specification of the present application – page 4, lines 9-10 – which contemplates a means 11 for operating the hoist 4 "operable from various positions, including ground level." Examiner is also referred to page 5, lines 16 through 18, in the present application, in which the means for operating the hoist is described as "a power source and a remote control unit 11 connected thereto that is operable from ground level at any point adjacent to the payload." Thus, the operational means in the present application is expressly not limited to a pendant system such as that described in Stewart '028.

Even assuming that the means in the present application was limited to the pendant system disclosed in Stewart '028, the Examiner has not demonstrated any suggestion or motivation to combine Stewart '028 with JP '573. See In re Sang-Su Lee, 277 F.3d 1338, 1343 (Fed. Cir. 2002) ("a showing of a suggestion, teaching, or motivation to combine the prior art references is an 'essential component of an obviousness holding.'" (quoting Brown & Williamson Tobacco Corp. v. Phillip Morris, Inc., 229 F.3d 1120, 1124-25 (Fed. Cir. 2000))). As the Court found in In re Sang-Su Lee, "the Board must identify specifically the principle, known to one of ordinary skill, that suggests the claimed combination. In other words, the Board must explain the reasons one of ordinary skill in the art would have been motivated to select the references and to combine them to render the claimed invention obvious.'" Id. (quoting In re Rouffet, 149 F.3d 1350, 1359 (Fed. Cir.

1998)); see also Kirkland v. Western Fiberglass, Inc., 915 F.2d 1583 (Fed. Cir 1990) (“[i]n determining obviousness, the process is not one of comparing the devices detail for detail to see if they match, but rather one of examining the claimed subject matter as a whole to see if, in light of the prior art, it would have been obvious to one skilled in the art”); In re Jones, 958 F.2d 347, 350 (Fed. Cir. 1992) (“[b]efore the PTO may combine the disclosures of two or more prior art references in order to establish *prima facie* obviousness, there must be some suggestion for doing so, found either in the references themselves or in the knowledge genuinely available to one of ordinary skill in the art”).

The applicant traverses the Examiner’s contention that it would have been obvious to one having ordinary skill in the art to combine the operational means of Stewart ‘028 with JP ‘573, as there is no citation or support for this assertion. As the Federal Circuit recently stated, “the examiner’s conclusory statements” and “subjective belief and unknown authority” are improper in the patentability analysis. In re Sang-Su Lee, 277 F.3d at 1343-44. JP ‘573 teaches an apparatus within the same field as the present invention, namely, a device for covering payloads. Stewart ‘028 discloses an apparatus for railroad piggyback operations. Thus, there was no teaching, motivation or suggestion to combine the particular feature of Stewart ‘028 with JP ‘573, and the Examiner has provided none. See In re Deminski, 796 F.2d 436, 442 (Fed. Cir. 1986); see also MPEP § 2141.01.

Further, for the reasons discussed above, JP ‘573 does not disclose a retractable line as does the present application. Accordingly, even if it were proper to combine the cited references, all limitations of the claimed invention are not taught or suggested by these references. See MPEP § 2143.03. For all these reasons, there is no *prima facie* case of obviousness with respect to these references.

### ***Response to Claim Rejections – 35 USC § 103 (Paragraph 11 of Office Action)***

In paragraph 11 of the Office Action, the Examiner rejects Claims 11 and 12 under 35 U.S.C. § 103(a) as unpatentable over JP ‘573 in view of Carlsson ‘047. As demonstrated below, the Applicant respectfully submits that these claims are not obvious.

The Examiner notes that JP ‘573 discloses a plurality of hanging fixtures 23 for attachment of the apparatus to the covering, but does not disclose or claim the plurality of spring loaded locking mechanisms claimed by the applicant. For the reasons discussed above, JP ‘573 does not anticipate the present invention. These arguments were presented above in traversing the Examiner’s

objections to Claim 1 from which Claims 11 and 12 depend. Accordingly, even if it were proper to combine JP '573 and Carlsson, all limitations of the claimed invention are not taught or suggested by these references, see MPEP § 2143.03, and thus, there is no *prima facie* case of obviousness with respect to these references as to Claims 11 and 12.

In addition, the Examiner has not demonstrated any suggestion or motivation to combine Carlsson '047 with JP '573. "Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art." In re Fine, 837 F.2d 1071 (Fed. Cir. 1988); In re Jones, 958 F.2d 347 (Fed. Cir. 1992); MPEP § 2143.01. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. In re Mills, 916 F.2d 680 (Fed. Cir. 1990). The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. MPEP § 2142.

Carlsson states that snap shackles "are primarily used on yachts, particularly sailboats" for attaching sails (see page 1, lines 12-13). There is no suggestion in Carlsson that its shackles would have application beyond that field. See In re Oetiker, 977 F.2d 1443 (Fed. Cir. 1992). In Oetiker, the Court rejected the Board's reliance on a hooking device use in garments as a reference against the applicant's hose clamp which also utilized a hook. The court rejected the Board's argument that "all hooking problems are analogous." Id. at 1446. Likewise, Carlsson being nonanalogous art to the present invention, there was no suggestion to combine a snap shackle used in attaching sails on boats with the payload covering device disclosed in JP '573. Consequently, the Examiner improperly combined these references and has failed to present a *prima facie* case of obviousness. See Id. at 1447.